

The opinion in support of the decision being entered today is
not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM P. ADDIEGO
and CHARLES M. SORENSEN, JR.

Appeal 2007-1564
Application 10/611,508
Technology Center 1700

Decided: July 27, 2007

Before CHARLES F. WARREN, THOMAS A. WALTZ, and
CATHERINE Q. TIMM, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
decision rejecting claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

I. BACKGROUND

The invention relates to catalyst products. Claims 1 and 13 are illustrative of the subject matter on appeal:

1. A supported catalyst, comprising:

a solid support; and

a porous coating on the solid support, the porous coating having as a major constituent a material exhibiting catalytic activity, the material exhibiting catalytic activity including a transition-metal containing material, the porous coating having a binder for holding the coating together and adhering the coating to the support.

13. A bulk transition metal-containing material catalyst, comprising:

a porous solid mass having as a major constituent a transition metal oxide, the solid mass having a binder for holding the catalytically active material together in the solid mass.

The Examiner relies on the following prior art references to show unpatentability:

Birkenstock	US 4,407,733	Oct. 4, 1983
Davies	US 6,793,728 B1	Sep. 21, 2004

The rejections as presented by the Examiner are as follows:

1. Claims 1-3, 5-7, 10-14, and 17-19 are rejected under 35 U.S.C. § 102(e) as anticipated by Davies; and
2. Claims 4, 8, 9, 15, and 16 are rejected under 35 U.S.C. § 103(a) as unpatentable over Davies in view of Birkenstock.

II. DISCUSSION

The Anticipation Rejection

With regard to the rejection under 35 U.S.C. § 102(b), the issue is: Has the Examiner identified something falling within the claimed subject matter that is specific enough to constitute a description of the claimed subject matter within the purview of 35 U.S.C. § 102?

In order to anticipate, a reference must identify something falling within the claimed subject matter with sufficient specificity to constitute a description thereof within the purview of 35 U.S.C. § 102. *See In re Schaumann*, 572 F.2d 312, 317, 197 USPQ 5, 8 (CCPA 1978).

Claim 1 is directed to a supported catalyst comprising a porous coating containing the catalyst on a solid support. Claim 13 is directed to a bulk transition metal-containing material catalyst in which the catalyst is contained in a porous solid mass.

Davies describes a coating composition applied to metal such as steel and used as a “shop primer” to protect the metal from corroding during construction, e.g. ship building (Davies, col. 1, ll. 11-46 and col. 2, ll. 50-63). The coating is intended to be non-porous as it is for corrosion protection. That it is intended to be non-porous is also evident from the fact that it can contain latex dispersions of organic resins (Davies, col. 3, ll. 46-64), it can contain binder and pigment so as to fill all the interstices between the particles in a close-packed system (Davies, col. 5, ll. 1-6), and there is no pinholing (Davies, col. 8, ll. 33-59).

The Examiner has failed to identify something in Davies that describes either a supported catalyst with the required porous coating or the bulk catalyst with a porous solid mass. The coating of Davies is a protective coating to prevent corrosion of metal and intended to be non-porous. The anticipation rejection is not adequately supported by the evidence relied upon.

The Obviousness Rejection

To reject claims 4, 8, 9, 15, and 16, the Examiner relies upon Davies in the same manner as in the anticipation rejection and further relies upon Birkenstock. Birkenstock is directed to a supported catalyst. Birkenstock does not remedy the deficiencies of Davies.

Moreover, the Examiner has not adequately explained why one of ordinary skill in the art would substitute the transition metals of Birkenstock for the zinc powder of Davies. The transition metals of Birkenstock are used as catalysts in chemical reaction processes, a different function than the function of the zinc powder steel protectant of Davies' coating composition. The obviousness rejection is not adequately supported by the evidence relied upon.

III. CONCLUSION

The decision of the Examiner to reject claims 1-3, 5-7, 10-14, and 17-19 under 35 U.S.C. § 102(b) and claims 4, 8, 9, 15, and 16 under 35 U.S.C. § 103(a) is reversed.

REVERSED

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